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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0863**

State of Minnesota,
Respondent,

vs.

Cordero Jarrod Phillips,
Appellant.

**Filed May 11, 2020
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-17-5580

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

After a court trial, a Ramsey County District Court judge found Cordero Jarrod Phillips guilty of unlawful possession of a firearm by an ineligible person. On appeal,

Phillips argues that the evidence is insufficient to sustain his conviction. We conclude that the state's direct evidence is sufficient to prove Phillips's guilt beyond a reasonable doubt. Therefore, we affirm.

FACTS

Phillips's conviction arises from an incident at a gas station and convenience store in St. Paul on the evening of July 26, 2017. An employee of the store called 911 to report that a man had pointed a handgun at another man during a confrontation near the gas pumps. Two police officers responded and found a handgun on a car seat where Phillips had been sitting when the officers arrived. The state charged Phillips with unlawful possession of a firearm by an ineligible person and unlawful possession of ammunition by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2016).

In November 2018, Phillips waived his right to a jury trial, and the case was tried to the court. At the beginning of trial, Phillips stipulated that he was prohibited from possessing a firearm or ammunition because of a prior drug conviction.

The state called six witnesses. The state's first witness was the store employee who called 911. She testified as follows: She saw a man who was a passenger in a white car point a gun at the driver of another vehicle. She watched the altercation until the second car drove away and the man with the gun returned to the passenger seat of the white car. She called 911. She later saw the police arrest the man with the gun, although she did not see the man's face. She did not dispute that, on the evening of the incident, she told a police officer that the gun was pointed toward the ground during the altercation rather than toward the driver of the other vehicle.

Officer Franklin testified that he responded to a report of a weapon at the gas station. After he arrived, he saw a white Chevrolet Monte Carlo parked near the gas pumps. He and his partner, Officer Buckley, ordered the passenger out of the vehicle and then the driver. Officer Franklin identified the passenger in the vehicle as Phillips and the driver as Byron Ramsey. After Phillips and Ramsey were placed in the back seat of the squad car, Officer Franklin approached the passenger side of the Monte Carlo, looked into the vehicle, and saw a handgun on the passenger seat in plain view.

Officer Buckley testified about the same events. He testified that he was not able to see Ramsey's hands until Ramsey raised them, approximately 10 to 15 seconds after the officers arrived at the scene. Officer Buckley testified that he did not see any furtive movements when he first observed Phillips and Ramsey in the white Monte Carlo and that he was able to see Ramsey's hands as Phillips was ordered out of the vehicle.

The state also introduced evidence concerning DNA testing of the handgun, although the test results were inconclusive. Phillips did not testify and did not introduce any evidence.

The prosecutor and Phillips's trial attorney presented oral closing arguments to the district court. The prosecutor argued that Phillips was in actual possession of the handgun during the confrontation with the driver of the other vehicle. The prosecutor relied on the store employee's testimony, her 911 call, and the surveillance video-recording. Phillips's attorney argued that Phillips did not have either actual possession or constructive possession of the handgun. Phillips's attorney argued that the store employee's testimony was not credible. Phillips's attorney also argued that Phillips's mere proximity to the

handgun was insufficient to prove that he exercised dominion or control over it and that the evidence is consistent with Ramsey's possessing the handgun and dropping it on the passenger seat.

Two days after trial, the district court filed an order in which it found Phillips guilty of both of the alleged offenses. The district court sentenced Phillips to 60 months of imprisonment on count 1, which concerned his possession of the handgun. The district court did not impose a sentence on count 2, which concerned his possession of the ammunition. Phillips appeals.

D E C I S I O N

Phillips argues that the state's evidence is insufficient to sustain his conviction. If a defendant challenges the sufficiency of the evidence supporting a conviction, we "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). "The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). This analysis applies in the same manner after a jury trial and after a court trial. *State v. Lopez*, 908 N.W.2d 334, 335 (Minn. 2018).

To prove the offense of possession of a firearm by an ineligible person, the state must prove that a defendant knowingly possessed a firearm while prohibited by law from doing so. Minn. Stat. § 624.713, subd. 1(2); *State v. Harris*, 895 N.W.2d 592, 601 (Minn.

2017). The parties stipulated that Phillips was ineligible to possess a firearm in July 2018. Thus, the question on appeal is whether he possessed the handgun that was found on the passenger seat of the vehicle from which he was removed.

The state may establish a violation of section 624.713 by proving either actual possession or constructive possession of a firearm. *See State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Actual possession means that the defendant had “actual or physical possession [of the firearm] at the time of arrest.” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). “The mere fact that an item is not in a defendant’s physical possession at the time of apprehension does not preclude prosecution for actual possession.” *State v. Barker*, 888 N.W.2d 348, 354 (Minn. App. 2016). To establish constructive possession, the state must prove “either (1) that the prohibited item was found in a place under defendant’s exclusive control to which other people did not normally have access,” or “(2) if the prohibited item was found in a place to which others had access, there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it.” *Salyers*, 858 N.W.2d at 159 (quotation omitted).

In finding Phillips guilty, the district court credited the employee’s testimony that she saw Phillips holding a handgun. The district court noted that the employee’s testimony was “imperfect” but nonetheless determined that “her testimony and prior statements were consistent and her testimony was certain.” The district court reviewed the surveillance video-recording of the incident and concluded that “the lack of clarity on the video [did] not refute or conflict with [the employee’s] testimony.” The district court reasoned that the DNA evidence neither supported a finding of guilt nor created a reasonable doubt.

Phillips contends that the evidence supporting his conviction is insufficient on the grounds that the circumstantial evidence is incapable of proving constructive possession and that there are “grave doubts” about the direct evidence that he was in actual possession of the handgun. In response, the state contends that the direct evidence is sufficient to prove Phillips’s actual possession of the handgun and that it is unnecessary to consider whether the circumstantial evidence is sufficient to prove constructive possession.

We begin by considering the state’s direct evidence, which was the focus of its closing argument to the district court and is the focus of its appellate argument. The state relies on the employee’s testimony and argues that it was corroborated by other evidence, such as the employee’s 911 call and the surveillance video-recording. This evidence, when considered in a light most favorable to the evidence and the district court’s findings of fact, is sufficient to support the district court’s ultimate finding that Phillips actually possessed the handgun that was later found in the vehicle. *Barker*, 888 N.W.2d at 354.

Phillips acknowledges the testimony of the store employee, the evidence of her 911 call, and the surveillance video-recording. But he argues that, for various reasons, there are “grave doubts” that he actually possessed the handgun. In support, Phillips cites two supreme court opinions, *State v. Langteau*, 268 N.W.2d 76 (Minn. 1978), and *State v. Ani*, 257 N.W.2d 699 (Minn. 1977). In *Langteau*, the appellant was convicted of aggravated robbery based solely on the uncorroborated testimony of the victim. 268 N.W.2d at 77. The supreme court reversed the conviction because certain details in the victim’s story were unexplained, the appellant’s motive was unexplained, and there was no evidence linking the appellant to the crime or supporting the state’s suggestion that the appellant was

under the influence of drugs. *Id.* In *Ani*, the appellant was convicted of criminal sexual conduct based solely on the uncorroborated testimony of the victim. 257 N.W.2d at 699-700. The supreme court stated, “Even though corroboration is not a requirement under the statute or the constitution, ‘the absence of corroboration in an individual case . . . may well call for a holding that there is insufficient evidence upon which a jury could find the defendant guilty beyond a reasonable doubt.’” *Id.* (alteration in original) (quoting Note, *The Rape Corroboration Requirement: Repeal Not Reform*, 81 Yale L.J. 1365, 1391 (1972)). But the supreme court affirmed the appellant’s conviction on the ground that the uncontradicted testimony of the victim was sufficient, by itself, to support the conviction. *Id.* Moreover, the supreme court later declined an opportunity to apply the corroboration rule suggested by the *Ani* opinion and instead reaffirmed that “a conviction can rest on the uncorroborated testimony of a single credible witness.” *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted).

The *Langteau* and *Ani* opinions reflect a form of appellate review that was more common in the early 20th century. *See, e.g., State v. Wulff*, 260 N.W. 515, 516 (Minn. 1935); *State v. Jacobson*, 153 N.W. 845, 847 (Minn. 1915); *State v. McLarne*, 150 N.W. 787, 789 (Minn. 1915); *State v. Cowing*, 108 N.W. 851, 855 (Minn. 1906). But in recent decades, the supreme court consistently has applied a form of review that is more deferential to the fact-finder’s evaluation of the evidence. This is reflected in *State v. Kline*, 124 N.W.2d 416 (Minn. 1963), in which the court stated, “Our responsibility extends no further than to make a painstaking review of the record to determine whether the evidence, direct and circumstantial, viewed most favorably to support a finding of guilt, was

sufficient to permit the jury to reach that conclusion.” *Id.* at 418; *see also State v. Carufel*, 783 N.W.2d 539, 546 (Minn. 2010); *State v. Kremmin*, 889 N.W.2d 318, 320 (Minn. App. 2017), *review denied* (Minn. Mar. 28, 2017). As stated above, applying the contemporary form of review leads to the conclusion that the state’s direct evidence is sufficient.

Even if we were to apply the caselaw cited by Phillips, we would find those cases distinguishable. In this case, there is no reason for this court to question the credibility of the store employee in light of the surveillance video-recording and the district court’s express statement that her testimony was credible despite imperfections. The district court noted that the employee’s testimony that she saw a gun in Phillips’s hand was consistent with the statement that she gave to police. The district court also stated, “From her position inside the cashier booth, [she] was in a position to see directly toward the pumps where the incident occurred, the area was well lit, [and] her attention was focused on the outside incident after her customer alerted her to the conflict outside.” The district court expressly rejected Phillips’s argument that the employee mistakenly believed that Phillips’s cellphone was a handgun, noting that she described the item in Phillips’s hand as “L-shaped.” Thus, even if we were to re-examine the record in a search for “grave doubts” about Phillips’s guilt, we would conclude that there are no such doubts in this case in light of the evidentiary record and the district court’s detailed findings of fact.

Thus, the state’s direct evidence is sufficient to prove beyond a reasonable doubt that Phillips actually possessed a handgun. In light of that conclusion, we need not consider

Phillips's argument that the state's circumstantial evidence is insufficient to prove beyond a reasonable doubt that Phillips constructively possessed a handgun.

Affirmed.